

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

|                                       |   |                       |
|---------------------------------------|---|-----------------------|
| In the matter of the adoption of New  | ) | NOTICE OF ADOPTION,   |
| Rule I, the amendment of ARM          | ) | AMENDMENT, AND REPEAL |
| 37.79.102, 37.79.201, 37.79.206,      | ) |                       |
| 37.79.207, 37.79.209, 37.79.301,      | ) |                       |
| 37.79.302, 37.79.303, 37.79.312,      | ) |                       |
| 37.79.316, 37.79.326, 37.79.501,      | ) |                       |
| 37.79.503, 37.79.505, 37.79.601,      | ) |                       |
| 37.79.602, 37.79.605, 37.79.606,      | ) |                       |
| 37.79.607, and 37.79.801, and the     | ) |                       |
| repeal of ARM 37.79.504 pertaining to | ) |                       |
| the Children's Health Insurance       | ) |                       |
| Program (CHIP)                        | ) |                       |

TO: All Interested Persons

1. On October 25, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-415 pertaining to the proposed adoption, amendment, and repeal of the above-stated rules, at page 1591 of the 2007 Montana Administrative Register, issue number 20.

2. The department has adopted New Rule I (37.79.106) as proposed.

3. The department has amended ARM 37.79.206, 37.79.207, 37.79.209, 37.79.301, 37.79.303, 37.79.312, 37.79.316, 37.79.501, 37.79.503, 37.79.505, 37.79.601, 37.79.602, 37.79.607, and 37.79.801 and repealed ARM 37.79.504 as proposed.

4. The department has amended the following rules as proposed with the following changes from the original proposal. New matter to be added is underlined. Matter to be deleted is interlined.

37.79.102 DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

(1) through (26) remain as proposed.

(27) "Third party administrator (TPA)" means an entity with a certificate of registration to conduct business in Montana in accordance with 33-17-603, MCA, or an entity licensed as a health service corporation. The CHIP program may contract for TPA services including but not limited to claims processing, maintaining an adequate network of participating providers, coordination and continuation of care, health education, notices, quality assurance, reporting, case management services, and customer service.

(28) and (29) remain as proposed.

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.201 ELIGIBILITY (1) through (1)(j) remain as proposed.

(2) Family income information for all family members must be included on the signed and dated application.

(a) through (a)(ii)(A) remain as proposed.

(B) The income of individuals under the age of 19 who live in the household but do not attend school is ~~inputted~~ imputed to the custodial parent.

(b) through (10) remain as proposed.

AUTH: 53-4-1004, 53-4-1009, MCA

IMP: 53-4-1003, 53-4-1004, MCA

37.79.302 COVERAGE LIMITATIONS (1) remains as proposed.

(2) Pre-existing conditions of each enrollee are covered as of the effective date of enrollment if the condition would be otherwise covered ~~except in the following conditions:~~

(3) and (4) remain as proposed.

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.326 DENTAL BENEFITS (1) through (4) remain as proposed.

(5) Enrollees with significant dental needs beyond those covered in the basic dental plan may, with prior authorization, receive additional services through the CHIP Extended Dental Plan (EDP). The EDP program is dependent on legislative appropriation for the program.

(a) through (7) remain as proposed.

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.605 PARTICIPATING PROVIDERS (1) through (4) remain as proposed.

(5) ~~Participating providers may not bill the enrollee, parent, or guardian for any medical care provided beyond the cost sharing provisions outlined in ARM 37.79.504.~~ In addition to the cost sharing provisions outlined in ARM 37.79.501, participating providers may bill the enrollee, parent, or guardian for services provided to a CHIP enrollee, which are not covered benefits.

(6) through (6)(b) remain as proposed.

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.606 REIMBURSEMENT OF THE THIRD PARTY ADMINISTRATOR

(1) remains as proposed.

~~(2) The third party administrator will receive a monthly administrative fee and weekly claims payment. These payments are considered to be payment in full and the third party administrator may not bill the enrollee, parent, or guardian for any medical care provided beyond the cost-sharing provisions outlined in ARM 37.79.501.~~

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

5. The department is revising their text that was proposed adding the sentence "The EDP program is dependent on legislative appropriation for the program" to ARM 37.79.326(5) to clarify that an individual enrollee's dental benefits available under the extended dental program may be limited by the Legislature's annual appropriation for EDP benefits. If the EDP appropriation is expended during a fiscal year, those CHIP benefits may no longer be available to enrollees for the remainder of the benefit year.

6. The department has thoroughly considered all commentary received. The comments received and the department's response to each follows:

COMMENT #1: A commentor supported funding by the 2007 Legislature to provide additional dental benefits for children covered under CHIP. The commentor supports the amendment to ARM 37.79.326 and appreciates the department's effort to ensure that the application process for this extended dental benefit is simple and easily navigable by dentists and their staff.

RESPONSE: The department appreciated the commentor's participation in the rulemaking process.

COMMENT #2: A commentor commented that the meaning of the term "adequate network of participating providers", which appears in ARM 37.79.102(26), should be established in rule.

RESPONSE: The department reviewed several health plans that use the services of a third party administrator. No Montana plan defines the term, which is difficult to quantify in a state wide plan. Currently, the department does not agree that an adequate network needs to be defined in rule but it will continue to consider the comment and will amend the rule if necessary.

COMMENT #3: A commentor commented that adding ARM 37.79.209(1), which states that income verification is not required with an application, could result in families with too high of income receiving CHIP.

RESPONSE: Many states have removed the requirement that every applicant provide income verification because it eliminates a barrier to applying and eliminates unnecessary paperwork. Section (2) of the rule requires the department to verify eligibility of a random sample of families. The experience of Montana and other

states has been that random verification of a sample of applicants saves administrative dollars and does not result in a higher percentage of ineligible recipients. The department will continue to monitor the policy change.

COMMENT #4: A commentor commented that the current CHIP Third Party Administrator (TPA) performs TPA services under its health insurance license and is not licensed, nor is it required to be licensed, under 33-17-603, MCA. The commentor requested the department add the following language to the definition of Third Party Administrator ... "or an entity licensed as a health service corporation".

RESPONSE: The department agrees and has amended ARM 37.79.102(27) to reflect the change in definition of a Third Party Administrator.

COMMENT #5: A commentor requested that ARM 37.79.605(5) be clarified to provide that participating providers may bill the enrollee, parent, or guardian for benefits/services provided to a CHIP participant, beyond the cost sharing provisions, for services that are not covered benefits.

RESPONSE: The department agrees and has revised ARM 37.79.605(5) of the rule to reflect the suggested change.

COMMENT #6: A commentor recommended the department delete the proposed section (2) of ARM 37.79.606 in its entirety. That section states, "The third party administrator will receive a monthly administrative fee and weekly claims payment. These payments are considered to be payment in full and the third party administrator may not bill the enrollee, parent, or guardian for any medical care provided beyond the cost-sharing provisions outlined in ARM 37.79.501." The commentor indicated, "TPAs do not bill enrollees, parents, or guardians for any medical care or cost sharing amounts. The CHIP program, the department, or the providers are the only entities that would bill for or demand such amounts."

RESPONSE: The department agrees and has deleted section (2) of ARM 37.79.606. Section (1) of ARM 37.79.606 states, "In consideration for all services rendered by a third party administrator under a contract with the department, the third party administrator will receive for services provided as agreed in the contract." This section, which references the department's TPA contract, is sufficient.

/s/ Geralyn Driscoll  
Rule Reviewer

/s/ Joan Miles  
Director, Public Health and  
Human Services

Certified to the Secretary of State January 7, 2008.